

Private Sector Housing Civil Penalties Guidance

January 2019

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Introduction

This policy has been created in accordance with the ‘Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities’ (“the DCLG Guidance”), published by the Department for Communities and Local Government.

This policy is to supplement the Private Sector Housing Enforcement Policy.

A Civil Penalty will be calculated based on a tested model produced by Nottingham City Council. An excel calculator will be used in all cases to ensure a consistent approach, however a paper version is available in Appendix 1.

In this document, the term “landlord” will be used to refer to the “owner”, “person having control”, “person managing” or “licence holder”, as defined under the Housing Act 2004 (“the 2004 Act”). The term “Landlord” will also be used to refer to tenants of houses in multiple occupation who have committed offences under section 234 of the Housing Act 2004. The term “the Council” will be used to refer to Newcastle City Council in its capacity as a Local Housing Authority.

Housing offences covered by civil penalties

The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation
- Section 95 – Offences in relation to licensing of houses under Part 3 of the Act
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of Houses in Multiple Occupation

Determining the Civil Penalty Amount

The Council has the power to impose a civil penalty of up to £30,000; this section sets out how the Council will determine the appropriate level of civil penalty in each case. The actual amount levied in each case should reflect the severity of the offence and consider the landlord’s income and track record.

The civil penalty is made up of two distinct components.

1. The penalty calculation; Consideration of the severity of the offence, the landlord's track record and the landlord's income.
2. Financial Benefit; The amount, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

The process to determine a Civil Penalty is broken down into four main stages:

Stage 1 determines the penalty band for the offence. Each penalty band has a starting and maximum amount.

Stage 2 determines how much will be added to the penalty amount as a result of the landlord's income and track record.

Stage 3 is where the figures from stage 2 are added to the penalty band from stage 1.

Stage 4 considers any financial benefit the landlord obtained from committing the offence. This amount will be added to the figure from stage 3.

Stage 1 - Determining the Penalty Band

This stage considers the landlord's culpability for the offence, and the seriousness of harm risked to the tenants or visitors to the property.

Assessing a landlord's culpability

Table 1 sets out the four levels of culpability to be considered. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 - Levels of Culpability

Very high	Deliberate breach of or flagrant disregard for the law
High	Offender fell far short of their legal duties; for example, by: failing to put in place measures that are recognised legal requirements or regulations; ignoring warnings raised by the local Council, tenants or others; failing to make appropriate changes after being made aware of risks, breaches or offences; allowing risks, breaches or offences to continue over a long period of time. Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories. Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.
Low	Offender did not fall far short of their legal duties; for example, because: significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion; they have offered a reasonable defence for why they were unaware of the risk, breach or offence. Failings were minor and occurred as an isolated incident

When assessing culpability, consider all of the evidence gathered as part of the investigation into the offence and identify any aggravating or mitigating factors which may be relevant to the assessment of culpability.

Using the aggravating and mitigating factors, consider each category of culpability in table 1 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation i.e. record of having to take enforcement action previously whether complied with or not
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash
- Evidence of threatening behaviour/harassment of the tenant.

Mitigating factors could include:

- Cooperation with the investigation e.g. turns up for the PACE interview
- Voluntary steps taken to address issues e.g. submits a prompt licence application
- Willingness to undertake training
- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where there vulnerability is linked to the commission of the offence
- Good character i.e. no previous convictions and/or exemplary conduct

Seriousness of harm risked

Table 2 separates the seriousness of harm risked into three levels with an accompanying description. The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for greater harm to have occurred.

Table 2 - Seriousness of Harm Risked

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System ¹ .
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the 'Housing Health and Safety Rating System ³ .
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Penalty levels and bands

Using the determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5+) in Table 3. Compare this penalty level to Table 4 and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.

If the penalty band is 5 / 5+ consideration should be given if prosecution is a more appropriate course of action.

Table 3 - Penalty Levels

Seriousness of Harm Risked	Culpability			
	Very high	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

Table 4 - Penalty Bands

Penalty Level	Penalty Band
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5 / 5+	£15,000 - £30,000

Stage 2 - Considering the landlord's income and track record

This stage considers the landlord's income and the landlord's track record. Each of these will affect the penalty calculation.

¹ Office of the Deputy Prime Minister: London (2006), *Housing Health and Safety Rating System Operating Guidance*, page 47

The landlord's Income

For penalties that fall within bands 1 to 4, the landlord's income will be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

Although the Council is permitted to consider all of a landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious offences (penalties that fall within bands 5 and 5+). Where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

All sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used. Tenancy agreements and property management contracts can be requested using the Council's existing powers. This should be done where copies are not already available.

- For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.
- For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

Calculation of Increase in Penalty as a result of the landlord's income

To determine what percentage of the relevant weekly income should be added to the penalty amount take the penalty band determined in Table 4, and compare it to Table 5. This will give the percentage of the landlord's relevant weekly income to be added to the civil penalty.

Table 5 - % of relevant weekly income

Penalty Level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used, and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Estimates of average weekly income will be calculated on a case by case basis but will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

Calculation of an increase as a result of the Landlord’s track record

The track record of the landlord will be an important factor in determining the final amount of the civil penalty imposed. A higher penalty will be appropriate where the landlord has a history of non-compliance.

Table 6 sets are questions that must be asked for each landlord. Each of the questions will be categorised based on the seriousness of the offence or enforcement action to which the question refers. This provides a weighting that increases with the seriousness. Table 7 shows the four categories and the weighting which is applied to each one.

- Any questions where the answer is ‘no’ will have a weighting of zero
- For questions where the number of occasions is relevant, the total weighting for a ‘yes’ answer will be the question multiplied by the number of occasions.
E.g. if a question has a weighting of 5 and the landlord has committed the offence 3 times, this will give a total score of 15 for the question.

Table 6 - Questions & Weightings

Questions	Weighting for a ‘Yes’ answer	Multiplied by the number of occasions?
Has the landlord had any relevant ¹ notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years? <i>where the offence is failure to comply with an improvement notice, that notice should also be included</i>	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant ¹ offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a ‘straight to enforcement action’ approach?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No

Has the landlord breached any relevant ² notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant ³ offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No
¹ any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'. ² any notices served under legislation relating to housing, Crown Prosecutors health or environmental health. ³ any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.		

Table 7 - Weightings

Category	Weighting
Category 1 (<i>Least serious</i>)	1
Category 2 (<i>Moderately Serious</i>)	5
Category 3 (<i>Very Serious</i>)	10
Category 4 (<i>Most serious</i>)	20

Once all the questions have been answered, the weighting for each is totalled and compared to Table 8. This provides the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. E.g. the total score is 25 and so the corresponding percentage increase in Table 8 will be 60%.

Table 8 - % Increase

Score	0	1	3	5	7	9	11	13	15	17	21	23	25	27	27	31	33	34	37	39+
%	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	100

Stage 3 - Adding Income and Track Records Amounts to the Penalty Band

To get the amount of the penalty calculation, the two figures from Stage 2 should be added to the starting amount for the penalty band. E.g. if the increase for income is £500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to get the penalty calculation amount.

If the amount calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

Stage 4 - Calculating financial benefit from the offence

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

You must be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

Where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether to pursue a Rent Repayment Order.

If work in default has been carried out, any debt not yet recovered, this can be taken into account as financial benefit from the offence.

Calculating the amount of financial benefit obtained will need to be done on a case by case basis but examples are found in Table 9.

Table 9 – examples of financial benefit

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offence of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations.

Imposing the financial penalty

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question (Appendix 2).

This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose a civil penalty, and;
- Information about the Landlord's right to make representations to the Council.

Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty.

The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent, but it cannot be a greater amount.

Final Notice

The imposing of a civil penalty involves serving a final notice (Appendix 3) and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

Withdrawing or Amending Notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case basis.

Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that Landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

Payment of a Civil Penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given (“the 28 day payment period”), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice (Appendix 3).

Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12 month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5000;
- A Third Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £1000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector.

Appendix 1 – Civil Penalty Calculator – Paper Version

Stage 1 of 4 – Determining the Penalty Band

Culpability of the Offender (Circle the appropriate one)

Low	Medium	High	Very High
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See page 7 of Nottingham City Council's Civil Penalties Enforcement Guidance for further details of the culpability levels

Seriousness of Harm Risked by the Offence (Circle the appropriate one)

Level C	Level B	Level A
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See page 8 of Nottingham City Council's Civil Penalties Enforcement Guidance for further details of the harm levels

Penalty Level (Circle the appropriate number)

Seriousness of Harm Risked	Culpability			
	Very High	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

Penalty Band (Select the relevant penalty level from the table and enter the appropriate amounts in the boxes)

Penalty Level	Starting Amount	Upper Limit
1	£600	£1200
2	£1200	£3000
3	£3000	£6000
4	£6000	£15,000
5 / 5+	£15,000	£30,000

Starting Amount £

Upper Limit £

Stage 2 of 4 – Relevant Weekly Income

Relevant Income Type & Amount

Type of Relevant Income (Tick the relevant box)			Amount of Relevant Weekly Income <input style="width: 100px;" type="text"/>
Rental Income (Owners) <input type="checkbox"/>	Management Fees (Property Agents) <input type="checkbox"/>	All Income (Bands 5 / 5+) <input type="checkbox"/>	

% of Income (Circle the column which matches the penalty level from stage 1)

Penalty Level	1	2	3	4	5	5+
% of Income	50%	100%	150%	250%	400%	600%

Box 1

Amount to be added to the Penalty Calculation £

Multiply the 'amount of relevant weekly income' by the relevant % from the table above.

Note: The amount in the Box 1 is the amount that will be added to the penalty calculation in Stage 4, as a result of the offender's income.

Stage 3 of 4 – The Offender’s Track Record

Step 1) Answer each of the questions in the table below by entering ‘✓’ or ‘X’ in the ‘/’ column.

Step 2) In the ‘X’ column, enter the number of occasions that the particular offence, breach or other action has taken place in the last 2 years. Where the box is coloured black with the number 1 in it, treat the number of occasions as 1, regardless of the actual number of occasions.

Step 3) Multiply the number in the ‘W’ column by the number in the ‘X’ column and enter this in the ‘Score’ column.

Step 4) Add all the numbers in the ‘Score’ column together and enter the total in the box at the bottom.

Questions	W	<input type="checkbox"/> /’	X	Score
How many relevant notices, under Part 1 of the Housing Act 2004, has the landlord had served on them in the last 2 years? (including any notices relevant to this offence)	1			
How many civil penalties has the landlord had imposed on them in the last 2 years?	5			
How many cautions for relevant offences has the landlord accepted in the last 2 years?	10			
How many times has the landlord breached relevant notices, which resulted in works in default being carried out, in the last 2 years?	10			
How many convictions for relevant offences has the landlord had in the last 2 years?	20			
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20			
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10			
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5			
Has the Landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20			
IMPORTANT: where the answer is ‘No’, the score will always be zero.	Total Score			

Step 5) Using the ‘Total Score’ from the questions above, find and circle the column in the table below which matches that score. The top row in the table below shows the different scores and the bottom row shows the relevant % for that score.

Score	0	1-2	3-4	5-6	7-8	9-10	11-12	13-14	15-16	17-18	19-20	21-22	23-24	25-26	27-28	29-30	31-32	33-34	35-36	37-38	39+
%	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100

Step 6) Enter the starting amount for the penalty level (determined in Stage 1) in the box below. To get the amount to be added to the penalty calculation, multiply the % from the table above by the starting amount for the

Starting Amount for the Penalty Level Enter the ‘Starting Amount’ for the penalty level, as determined in Stage 1.

Box 2

Amount to be added to the Penalty Calculation £ Multiply the ‘Starting Amount for the Penalty Level’ by the relevant % from the table above.

Note: The amount in the Box 2 is the amount that will be added to the penalty calculation in Stage 4, as a result of the offender’s track record.

Stage 4 of 4 – Calculating the Final Penalty Amount

Step 1) Complete the boxes below by entering the relevant amounts from the other stages.

Starting Amount £ Enter the 'Starting Amount' for the penalty level, as determined in Stage 1.

Increase due to Income £ Enter the amount to be added as a result of the offender's income, as determined in Stage 2.

Increase due to Track Record £ Enter the amount to be added as a result of the offender's track record, as determined in Stage 3.

Upper Limit £ Enter the 'Upper Limit' for the penalty level, as determined in Stage 1.

Step 2) Add the amounts in the Box 4 and Box 5 to the amount in the Box 3. Enter the total in the Box 7.

£

Step 3) Is the amount entered in the Box 7, higher than the amount in the Box 6 (Upper Limit)?

Yes	Enter the amount in the Box 6 in the Box 8
No	Enter the amount in the Box 7 in the Box 8

£

Step 4) Did the offender obtain any financial benefit from committing the offence?

Yes	Enter the amount obtained in the Box 9
No	Enter zero in the Box 9

£

Step 5) Add the amount in the Box 8 to the amount in the Box 9 and enter the total in the Box 10.

£

Step 6) Is the amount entered in the Box 10 higher than £30,000?

Yes	Enter £30,000 in the Box 11
No	Enter the amount in the Box 10 in the Box 11

£

The amount in the Box 11 is the final penalty amount for the civil penalty.

City of Newcastle Upon Tyne

Housing Act 2004 Schedule 13A, Paragraph 1

Notice of Intent

(Notice of Intent to Impose a Financial Penalty)

To:

THIS NOTICE is Issued by Newcastle City Council (the Authority) in exercise of its powers under section 249A of the Housing Act 2004 ("the Act).

Pursuant to Schedule 13A of the Act notice is hereby given that the Authority is proposing to impose a financial penalty because it is satisfied beyond reasonable doubt that your conduct amounts to a relevant offence in respect of premises in England.

In that as a person having control of a House in Multiple Occupation namely ADDRESS which was required to be licensed under part 2 of the housing Act 2004, you failed to licence said property, which is an offence under section 61 and 72(1) of the Housing Act 2004.

In reaching the decision the Authority have taken into account the Information detailed in the attached Schedule A.

It is proposed that the amount of the financial penalty will be £X,XXX and a summary of the penalty calculation is attached to this notice.

You may make written representations to the Authority about the proposal to impose a financial penalty. Any representations must be made to the Authority within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

After the end of the period for representations the Authority must decide whether to impose a financial penalty on you, and if it decides to impose a financial penalty, decide the amount of the penalty.

Dated this



Director of Operations and Regulatory Services

Any enquiry or communication relating to this notice should be addressed to:

Director of Operations and Regulatory Services, Newcastle upon Tyne City Council,
Civic Centre, Newcastle upon Tyne, NE1 8PB, Phone: 0191 2116159

This matter is being dealt with by

Notes

Housing Act 2004, Schedule 13A (as amended by the Housing and Planning Act 2016)

Notice of Intent

1. Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").
2. (1) The notice of Intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But If the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given:
 - a. at any time when the conduct is continuing, or
 - b. within the period of 6 months beginning with the last day on which the conduct occurs;
(3) For the purposes of this paragraph a person's conduct includes a failure to act
3. The notice of intent must set out –
 - a. the amount of the proposed financial penalty,
 - b. the reason for proposing to impose the financial penalty, and
 - c. information about the right to make representations under paragraph 4.

Withdrawal or Amendment of the Notice

9. (1) A local housing Authority may at any time
 - a. Withdraw a Notice of Intent or final Notice, or
 - b. Reduce the amount specified in a Notice of Intent or Final Notice
(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Schedule A

Date(s) of the alleged offence: **XX XX 2018 – XX XX 2018**

Premise to which the alleged offence relates: **ADDRESS** (“the Property”)

Summary of the Offence

In reaching the decision to impose a Civil Penalty the Authority took into account the following information:

City of Newcastle Upon Tyne
Housing Act 2004 Schedule 13A, Paragraph 6
Final Notice
(Decision to Impose a Financial Penalty)

To:

THIS NOTICE is Issued by Newcastle City Council (the Authority) in exercise of its powers under section 249A of the Housing Act 2004 ("the Act).

Pursuant to Schedule 13A of the Act notice is hereby given that the Authority has decided to Impose a financial penalty for the amount of £X,XXX.

On the **DATE** the authority served a Notice of Intent on you that proposed to impose a financial penalty on you because you **failed to licence a House in Multiple Occupation; an offence under section 61 and 72(1) of the Housing Act 2004. This is in relation to ADDRESS.**

In reaching this decision, the Authority has considered any written representations made by you. The reasons for deciding to impose a financial penalty are:

- 1.
- 2.
- 3.
- 4.

The financial penalty must be paid within the 28 days beginning with the day after that on which the notice was given. Details regarding the payment of the financial penalty and the consequences of failure to comply with the notice are set out below.

You have a right of appeal to the First-tier Tribunal the decision to impose the penalty, or the amount of the penalty. If an appeal is lodged this notice is suspended until the appeal is finally determined or withdrawn.

Dated this



Director of Operations and Regulatory Services

Any enquiry or communication relating to this notice should be addressed to:

Director of Operations and Regulatory Services, Newcastle upon Tyne City Council,
Civic Centre, Newcastle upon Tyne, NE1 8PB, Phone: 0191 2116159

This matter is being dealt with by

How the Penalty Charge may be Paid

Appealing Against this Notice

You may appeal to a First Tier Tribunal, within the period of 28 days from the day after the date of this notice. The Tribunal will consider any appeal you make and the circumstances of the alleged offence and will decide whether to confirm, vary or cancel this notice. The final notice may not be varied so as to make it impose a financial penalty of more than the local housing authority could have Imposed.

An appeal to the First Tier Tribunal must be against:

- The decision to Impose the penalty, or;
- the amount of the penalty.

An appeal to the First Tier Tribunal is to be a re-hearing of the local housing authority's decision, but may be determined having regard to matters of which the Authority was unaware.

This final notice will be suspended until the appeal is finally determined or withdrawn. This means we cannot pursue you for payment whilst the appeal is ongoing.

Appeals will be heard by the First Tier Tribunal in the Property Chamber: further details on the appeal procedure can be found at the following link -

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

If You do not pay the Financial Penalty within 28 days or Following an Unsuccessful Appeal

Unless the Authority withdraw this notice or the Tribunal cancels it, the Authority may recover the penalty or part of it on the order of the county court as if it were payable under an order of that court. This may result in bailiff action or a charge being placed against any property or relevant assets owned by you.

These proceedings cannot be started any earlier than:

- the end of the period allowed for the payment of the financial penalty, or;
- where you have appeal to a First Tier Tribunal, before the day on which the appeal is either withdrawn or determined.

Notes

Final Notice

5. After the end of the period for representations the local housing authority must:
 - a. Decide whether to impose a financial penalty on a person, and
 - b. If it decides to impose a financial penalty, decide the amount of the penalty
6. If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.
7. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.
8. The final notice must set out-
 - a. the amount of the financial penalty,
 - b. the reasons for imposing the penalty,
 - c. Information about how to pay the penalty,
 - d. the period for payment of the penalty,
 - e. Information about rights of appeal, and
 - f. the consequences of failure to comply with the notice

Withdrawal or amendment of notice

9. (1) A local housing authority may at any time-
 - a. withdraw a notice of Intent or final notice, or
 - b. reduce the amount specified in a notice of Intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the persons on whom the notice was given.

Appeals

10. (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against-
 - a. the decision to impose the penalty, or
 - b. the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph-
 - a. is to be a re-hearing of the local housing authority's decision, but
 - b. may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of Financial Penalty

11. (1) This paragraph applies if a person falls to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is-

a. signed by the chief finance officer of the local housing authority which imposed the penalty, and

b. "states that the amount due has not been received by a date specified in the certificate is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph "chief finance officer" has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Appendix 4 – Worked Example 1

Landlord A owns and operates an unlicensed HMO. Landlord A has been made aware of the need to apply for an HMO licence but has failed to do so and has continued to operate unlicensed for the past 6 months. The rental income received by Landlord A during this 6 month period is £7500. This is not the first time that Landlord A has been the subject of enforcement action, having previously been cautioned for operating another unlicensed HMO a year ago and being served improvement notices on two separate occasions in the last 12 months. Both notices were complied with.

Offence: Operating an unlicensed HMO

Culpability: 'Very High' (*Deliberate breach of or flagrant disregard for the law*)

Justification: Landlord A is aware of requirement to licence the property and the consequences of not doing so but has chosen not to comply anyway.

Seriousness of harm risked: 'Level C'

(All other cases not falling within Level A or Level B)

Justification: the specific offence of operating an unlicensed HMO does not implicitly mean that there are any defects or deficiencies in the property. As such, the seriousness of harm risked would not meet the descriptions of 'Level A' or 'Level B'.

Penalty band: 4 - £6000 to £15,000 (*'Very High' culpability and 'Level C' harm*)

Increase due to the landlord's track record: £1800

(30% of the starting point for the penalty)

Justification: in the last two years, Landlord A has accepted 1 caution for a relevant offence and has been served 2 relevant notices, under Part 1 of the Housing Act 2004. This gives us a score of 12 and an increase of 30% of the penalty amount. This is an increase of £1800.

Increase due to the landlord's income: £721.15

(250% of weekly rental income from the property where the offence occurred)

Justification: the penalty band is 4 and Landlord A is the owner of the property where the offence occurred. As such, the relevant income for consideration is the weekly rental income for the property and 250% of this will be added to the penalty amount. In this case, the relevant weekly income is £288.46 and so £721.15 will be added.

Penalty calculation amount: £8521.15 ($£6000 + £1800 + £721.15 = £8521.15$)

Financial benefit obtained from committing the offence: £7500

Justification: Landlord A has received £7500 in rental income from the property during the time that it has been unlicensed and so this can be considered the financial benefit received from committing the offence.

Final amount of the civil penalty: £16021.15 ($£8521.15 + £7500 = £16021.15$)

Appendix 5 – Worked Example 2

Landlord B owns and manages a single family dwelling. During an inspection, a category 1 hazard (falls on stairs) and multiple category 2 hazards were identified at the property. The stairs were in an extremely dangerous condition but could be made safe fairly easily. An improvement notice was served on Landlord B and some of the works to reduce the category 2 hazards were carried out but the remainder of the works on the notice were not. Works in default were carried out at the property with a total cost of £2000. Landlord B was also prosecuted 18 months ago for failing to comply with an improvement notice. A financial investigation into Landlord B found that they have received an annual income of £50,000.

Offence: Failing to comply with an improvement notice.

Culpability: ‘Very High’ (*Deliberate breach of or flagrant disregard for the law*)

Justification: Landlord B was aware of the need to comply with the Improvement Notice as some of the works were completed. Landlord B is also aware of the consequences of failing to comply with the notice as previous enforcement action has been taken against them for this reason.

Seriousness of harm risked: ‘Level A’

Justification: The condition of the staircase creates a Category 1 hazard and if someone were to trip or fall on the stairs, they could reasonably end up with harm outcomes that meet the descriptions of Class 1 and Class 2 harm outcomes under the Housing Health & Safety Rating System. This means that the seriousness of harm risked meets the description of ‘Level A’.

Penalty band: 5+ - £15,000 to £30,000 (*‘Very High’ culpability and ‘Level A’ harm*)

Increase due to the landlord’s track record: £12,000

(80% of the starting point for the penalty)

Justification: in the last two years, Landlord B has been prosecuted for a relevant offence, has been served 1 relevant notice under Part 1 of the Housing Act 2004, and has been subject to works in default. This gives us a score of 31 for his track record and an increase of 80% of the penalty amount. This is an increase of £12,000.

Increase due to the landlord’s income: £5769.23

(600% of the Landlord’s average weekly income)

Justification: the penalty band is 5+ and so a financial investigation was carried out to identify all of Landlord B’s income. The investigation found they received a total annual income of £50,000 and 600% of their average weekly income will be added to the penalty amount. In this case, the average weekly income is £961.54 and so £5769.23 will be added.

Penalty calculation amount: £30,000 ($£15000 + £12000 + £5769.23 = £32,769.23$)

Financial benefit obtained from committing the offence: None

Justification: works in default were carried out at the property and the cost of these works, plus an administration fee, were charged to Landlord B. As such, it cannot be said that Landlord B obtained financial benefit from committing the offence.

Final amount of the civil penalty: £30,000

(£15000 + £12000 + £5769.23 = £32,769.23 - civil penalties are capped at £30,000)

Appendix 6 – Worked Example 3

Landlord C is the appointed manager of a three bedroom licenced HMO. The company is paid £90 per month to manage the property on behalf of the owner. During a compliance inspection, it was found that they had neglected to display any of the manager's details anywhere in the property. They were warned about this one year ago and stated that they were aware of the requirement but an oversight meant that they missed this property when displaying details. They have not been the subject of any formal enforcement action in the last 2 years and the property was otherwise in a satisfactory condition.

Offence: Failure to comply with management regulations in respect of Houses in Multiple Occupation.

Culpability: 'Low' (*Failings were minor and occurred as an isolated incident*)

Justification: the company does not have a history of non-compliance and the breach was fairly minor and easily rectified.

Seriousness of harm risked: 'Level C'

(*All other cases not falling within Level A or Level B*)

Justification: The seriousness of harm risked to the tenants was low and so it would not meet the descriptions of harm found in 'Level A' or 'Level B'.

Penalty band: 1 - £600 to £1200 (*'Low' culpability and 'Level C' harm*)

Increase due to the landlord's track record: None

Justification: in the last two years, Landlord C has not been the subject of any formal enforcement action and so there is no increase in the penalty amount due to their track record.

Increase due to the landlord's income: £10.39 (*50% of weekly rental income from the property where the offence occurred*)

Justification: the penalty band is 1 and Landlord C is the manager of the property where the offence occurred. As such, the relevant income for consideration is the weekly management fees received for the property and 50% of this will be added to the penalty amount. In this case, the relevant weekly income is £20.77 and so £10.39 will be added.

Initial penalty calculation amount: £610.39 ($£600 + £10.39 = £610.39$)

Financial benefit obtained from committing the offence: None

Justification: the cost of displaying Landlord C's management details would be negligible and so it would not be reasonable to claim that financial benefit was obtained from committing the offence.

Final amount of the civil penalty: £610.39 ($£600.00 + £10.39 = £610.39$)